

## **REMARKS/ARGUMENTS**

Claims 1-36 are currently pending in the present application. Claims 1, 26 and 27 have been amended.

Applicants submit that no prohibited new matter has been introduced by the amendments. Written description support for the amended claims can be found throughout the specification. For example, see pages 10-14 and Fig. 6 in view of the following remarks.

The following issues are outstanding in the present application:

- Claims 1-10, 16-23 and 25-36 were rejected under U.S.C. § 103(a) in view of Nelson et al. (U.S. Patent No. 5,824,071) and Kamm et al. (U.S. Patent No. 6,605,053);
- Claims 11-15 and 24 were rejected under 35 U.S.C. § 103(a) in view Nelson et al. (U.S. Patent No. 5,824,071), Kamm et al. (U.S. Patent No. 6,605,053), and Knudson et al. (U.S. Patent No. 5,755,682);

Applicant respectfully traverses all of the rejections and requests reconsideration and withdrawal of the Examiner's outstanding rejection in light of the amendments and remarks contain herein.

## **INTERVIEW SUMMARY**

Applicant thanks the Examiner for the courtesy of an interview extended to applicant's representative on July 20, 2004. During the interview, the lack of motivation to combine the Nelson and Kamm references was discussed. Applicant's representative and the Examiner both agreed the combination of Nelson and Kamm destroy the intended use of the Nelson reference. Arguments presented during the interview are reiterated below.

## **REJECTIONS UNDER 35 U.S.C. § 103**

Claims 1-10, 16-23 and 25-36 were rejected under 35 U.S.C. § 103(a) as purportedly obvious over Nelson et al. (US Patent No. 5,824,071) hereinafter Nelson in view of Kamm et al. (US Patent No. 6,605,053) hereinafter Kamm. The Office Action states that it would have been

obvious to one of ordinary skill in the art at the time of invention to form the stents of the Nelson device in an hourglass or tapered shape in order to provide passive flow control, as taught by Kamm. Applicant respectfully traverses this rejection.

This rejection depends on the motivation to combine the teachings of Nelson and Kamm. The examiner has not established a *prima facie* of obviousness. No motivation has been provided to combine the teachings of Nelson and Kamm. As stated in the MPEP §2141.02, a prior art reference must be considered in its entirety, *i.e.*, as a whole, including portions that would lead away from the claimed invention. Nelson teaches an apparatus positioned between the left ventricle and the coronary sinus with a pressure sensitive valve (77) designed to remain closed until the pressure in the coronary sinus reaches about 60 mmHg (column 6, lines 48-56). Kamm teaches that it is desirable to provide a conduit having an asymmetrical flow resistance without the use of valves or other mechanical or moving parts due to the small dimensions of the conduits and corresponding valve and other mechanical flow control mechanisms. Kamm mentions that such active movable or other articulating devices may be complicated and/or expensive to manufacture, particularly on the small scales required in contexts such as passing blood directly from the left ventricle to the coronary artery, for example (column 6, lines 3-11). Nelson teaches using a pressure sensitive valve to control the coronary sinus pressure and Kamm teaches away from the use of valves or other mechanical/moving parts. Hence, the references of Nelson and Kamm do not provide motivation to combine the teachings. Instead, the combination teaches away from Nelson's intended use. Therefore, Applicant respectfully request withdrawal of the rejection.

The references relied upon are not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. There is no such objective reason to combine the teachings of the references. Therefore, withdrawal of the rejection under 35 U.S.C. § 103 is respectfully requested.

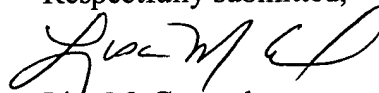
Claims 11-15 and 24 were rejected under 35 U.S.C. § 103(a) in view Nelson et al. (U.S. Patent No. 5,824,071), Kamm et al. (U.S. Patent No. 6,605,053), and Knudson et al. (U.S. Patent No. 5,755,682). Knudson was added to address limitations in the depend claims 11-15 and 24. These claims depend directly or indirectly from claim 1. The addition of the Knudson reference is insufficient overcome the improper combination of Nelson and Kamm, as discussed above for claim 1. Therefore, withdrawal of the rejection under 35 U.S.C. § 103 is respectfully requested.

## CONCLUSION

This application is in condition for allowance, and early notice to that effect is earnestly solicited. Should the examiner have any questions, comments or suggestions in furtherance of the prosecution of this application, she is invited to contact applicant's representative by telephone at the number indicated below.

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Respectfully submitted,



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